

1 SUPREME COURT OF THE UNITED STATES

2 EARNEST CASSELL WOODS II

3 Petitioner,

4 ✓

5 RON DAVIS, WARDEN; et, al

6 Respondents,

MOTION FOR BAIL

NO. 17-9480

7 Petitioner, Earnest Woods II, respectfully  
8 asks the Court for leave to file his motion for bail,  
9 U.S. v KATT, 333 F. Appx. 204 and U.S. v Stevens, in which  
10 the Court moved to set aside a judgment of  
11 conviction and to dismiss the indictment with  
12 prejudice based on failure to disclose, Brady  
13 material, Brady v Maryland, 373 U.S. 83,

14 Petitioner contends that he has sought  
15 relief in the appropriate lower courts and has  
16 attached copies of the orders from the lower  
17 courts to his writ of habeas corpus and to his  
18 application. (See exhibits), (Appendix's A-D)

19 Petitioner contends that relief is not  
20 available from any other court because California  
21 refuses to adhere to the federal habeas corpus  
22 standard that "the beyond a reasonable doubt  
23 harmless error standard set forth in People v  
24 Watson, 46 Cal. 2d 818 and Chapman v Cal. 386 U.S.  
25 18 "does not apply to trial errors", Brecht v Abraham-  
26 son, 507 U.S. At 637, which was applied in People v  
27 Woods, 0006442,

1 California has refused to apply the analysis  
2 of risk and the alternative definition explana-  
3 tion of the "residual clause" established in Johnson  
4 v. U.S., 135 S. Ct. 2551 where the Court stated, "Laws  
5 which prohibit the doing of things, and provide a  
6 punishment for their violation should not have a  
7 double meaning." U.S. v. Reese, 92 U.S. at 220.

8 Johnson's vagueness analysis turns on one main  
9 factor and two factors of lesser importance. The main  
10 factor is the intersection of risk and hypothetical  
11 facts. The less important factors are (1) juxtaposition  
12 to enumerated felonies, inviting comparisons; and  
13 (2) repeated judicial failures to craft a principled and  
14 objective standard. All three factors are abundantly  
15 present in California's "wherently dangerous felony"  
16 rule.

17 The "residual clause" contained an alternative  
18 definition of violent felony that included any felony  
19 involving conduct that presented a "serious potential  
20 risk of physical injury". The Johnson court held that  
21 the constitutional problem with the residual clause  
22 was that the analysis of risk was not based on  
23 actual facts but on hypothetical facts. The result  
24 was that defendants were deprived of any meaningful  
25 advance notice of which felonies would eventually  
26 be denominated "violent" and which ones would not.

27

1 The Adjudication of People v Woods, D006442,  
2 WAS BASED ON CALIFORNIA'S BEYOND A REASONABLE  
3 DOUBT HARMLESS ERROR STANDARD, BASED ON A FELONY  
4 MURDER RULE ERRONEOUS INSTRUCTION OF THE LAW OF  
5 IMPLIED MALICE, CALJIC NO. 8.11 (1983 REV.) WHICH WAS  
6 ERRONEOUSLY REVISED AND CAST IN DISJUNCTIVE  
7 LANGUAGE IN AN ATTEMPT TO FOLLOW THE LANGUAGE OF  
8 People v Watson, 30 Cal. 3d 290 (under the felony  
9 murder rule) thus, permitting jurors to find implied  
10 malice without necessarily finding a defendant  
11 subjectively appreciated the risk involved under  
12 the first alternative definition, People v Dellinger,  
13 201 Cal. App. 3d 945.

14 Petitioner contends that improperly giving the  
15 jury a felony murder instruction allowed the jury  
16 to convict him of second degree murder without  
17 finding malice, an element of the crime. The  
18 court was left with nearly total doubt of the  
19 effect of the error. This doubt was reinforced by  
20 the real possibility given inconsistent verdicts  
21 (in this case the jury found petitioner not guilty  
22 of voluntary manslaughter and not guilty of involun-  
23 tary manslaughter), the jury convicted through  
24 mistake or compromise in which case proper  
25 instructions could easily have swayed the out-  
26 come; the state court's harmless ness decision  
27 in People v Woods, D006442 was objectively unrea-

1 reasonable within the meaning of § 254 (d) (1),  
2 Davis v Ayala, 135 S. Ct. 2187

3 Petitioner contends that the "actual facts"  
4 of this case and the evidence supports his  
5 unreasonable belief in self defense. The trial  
6 court denied petitioner the right to present a  
7 defense," Condey Henry, 198 F. 3d 734, that was  
8 legally sound and the evidence made it applicable,  
9 Beardslee v Woodford, 358 U.S. 560, The trial court  
10 failed to instruct the jury on CALJIC NO. 5.17, the  
11 imperfect self defense doctrine.

12 Petitioner presented copies of his probation  
13 officer's report, Appellate's brief, respondent's brief,  
14 and the State Appellate Court ruling in People v Woods  
15 D006442, to show evidence that the "actual facts"  
16 were based on imperfect self defense, People v Flannel  
17 25 Cal. 3d 668.

18 Petitioner contends that he did not receive a  
19 copy of his direct appeal until July 19, 2017 from  
20 Attorney Howard Cohen, SB # 53313, Appellate  
21 Defenders Inc. 555 W. Beech Street, Ste, 300,  
22 San Diego, CA 92101.

23 The Court of Appeals, Fourth Appellate District  
24 states that "People v Woods, D006442, the record  
25 requested was destroyed in 2009 and is no longer  
26 available from the court."

27 Petitioner contends that the Court of Appeals

1 created an "actual injury," Lewis v Casey, 518 U.S.,  
2 at 351, that official acts or omission "hindered  
3 his efforts to pursue a nonfrivolous legal claim"  
4 preventing petitioner from filing the People v Chun  
5 Argument based on "government interference," Pace  
6 v Di Guelielmo, 544 U.S. 408, which Chun, 45 Cal.  
7 4th 1172 was heard in 2009, the same year People  
8 v Woods, D006442 was destroyed.

9 In People v Chun, the State Supreme Court has  
10 said that the felony murder rule eliminates the  
11 need for proof of malice in connection with a  
12 charge of murder, there by rendering irrelevant  
13 the presence or absence of actual malice, both  
14 with regard to first degree felony murder rule  
15 renders irrelevant conscious disregard for life  
16 malice. The felony murder rule acts as a substi-  
17 tute for conscious disregard for life malice.

18 The second degree felony murder rule applies to  
19 all felonies that are inherently dangerous is  
20 determined from the elements of the felony in  
21 the abstract, not the particular facts.

22 Petitioner contends that the California Judicial  
23 system has followed "Jim Crow" laws with archaic  
24 terms as "inherently dangerous," "conscious disre-  
25 gard for life," "reasonable doubt," "moral certainty,"  
26 "malice aforethought" and "implied malice" all terms  
27 under the felony murder rule. The inclusion of words

1 are so malleable because they are so obscure put  
2 the whole instruction at risk.

3 The statutory definition of implied malice has  
4 never proved of much assistance in defining the  
5 concept in concrete terms. The statutory definition  
6 permits even requires, judicial interpretation.

7 The California Supreme Court has interpreted  
8 implied malice as having both a physical and a  
9 mental component and the mental component is  
10 negated by imperfect self defense. In re Christian  
11 7 Cal.4th 768, The failure to instruct on imperfect  
12 self defense was not a harmless error, People v Ran-  
13 dle, 28 Cal. Rptr. 3d 725 and 134 Cal. Rptr. 2d 670, and  
14 Brecht v Abrahamson, 507 U.S. at 637, and it consti-  
15 tutes "failure to disclose material evidence" Brady v  
16 Maryland, 373 U.S. 83

17 Petitioner contends that relief is not available  
18 from any other court because California refuses to  
19 to adopt the rule applicable to federal criminal law  
20 which requires that judicial decisions that narrow  
21 the scope of criminal ~~(federal)~~ law liability be applied  
22 retroactively to convictions that are final on appeal,  
23 Schiro v Summerlin, 542 U.S. 348. He argues that failure  
24 to find retroactivity here would be unjust and would  
25 constitute a miscarriage of justice because the State  
26 Supreme Court in Chun adopted the very argument  
27 that he advanced in People v Woods, D006442,

1 THAT CALIFORNIA HAS VIOLATED PETITIONER'S FOUR-  
2 TEENTH AMENDMENT EQUAL PROTECTION CLAUSE BASED  
3 SOLELY ON THE INVIDIOUSLY DISCRIMINATORY ANIMUS  
4 BEHIND THE OFFICIAL ACTS, GRIFFIN v BRECKENRIDGE,  
5 403 U.S. 88. THE STATE HAS REFUSED TO TREAT "ALL  
6 PERSONS SIMILARLY SITUATED ALIKE," PLYLER v DOE, 457  
7 U.S. 202,

8 THE CALIFORNIA JUDICIAL SYSTEM HAS VIOLATED PETI-  
9 TIONER'S EIGHTH AMENDMENT RIGHT FOR EXCESSIVE  
10 BAIL, REQUIRING A JUDGE TO CONSIDER THE SERIOUSNESS  
11 OF THE OFFENSE, PETITIONER HAS NO PRIOR CRIMINAL  
12 RECORD, HAS PAID BAIL MULTIPLES TIMES ON THIS  
13 OFFENSE, MADE EVERY APPEARANCE AT TRIAL AND ALL  
14 COURTROOM PROCEEDINGS. IN THE COURTS DISCRETION  
15 THE PETITIONER MAY BE RELEASED WITHOUT BAIL.

16 PETITIONER CONTENDS THAT THE TRIAL COURT DENIED  
17 HIS RIGHT AGAINST EXCESSIVE BAIL AND ADEQUATE  
18 RELIEF CAN NOT BE OBTAINED IN ANY OTHER FORM OR  
19 FROM ANY OTHER COURT, IT STEMS FROM A DENIAL OF A  
20 PREFILING REVIEW ORDER, IN RE EARNEST CASSELL WOODS  
21 NINTH CIRCUIT COURT ORDER NO. 1480181, THEREFORE  
22 DENYING AN APPLICATION TO SEEK PERMISSION TO FILE  
23 A SECOND OR SUCCESSIVE 28 U.S.C. 2254 HABEAS  
24 CORPUS PETITION THEREFORE DENYING APPLICATION  
25 NO. 18-70070.

26 ADEQUATE RELIEF CAN NOT BE OBTAINED UNLESS  
27 THE PETITIONER CAN SHOW THAT HE HAS OBTAINED

1 AN ORDER FROM THE COURT OF APPEALS AUTHORIZING  
2 THE DISTRICT COURT TO CONSIDER A SUCCESSIVE OR  
3 SECOND PETITION, THE PETITION MAY NOT BE FILED IN  
4 THE DISTRICT COURT, 28 U.S.C. 2244(b)(3)(A).

5 PETITIONER CONTENDS THAT CONSTITUTIONAL ERROR  
6 OCCURS WHEN A JURY IS INSTRUCTED ON ALTERNATIVE THEORIES  
7 OF GUILT AND RETURNS A GENERAL VERDICT THAT MAY REST ON  
8 A LEGALLY INVALID THEORY. THIS DETERMINATION, HOWEVER  
9 DOES NOT NECESSARILY REQUIRE REVERSAL OF A CONVICTION;  
10 SKILLING V. U.S., 561 U.S. 358. HE REASSERTS THAT THE ADJUDICATION  
11 PEOPLE V. WOODS, D006442 WAS CONTRARY TO OR  
12 INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED  
13 LAW, BRECHT V. ABRAHAMSON, 507 U.S. 619. HE ASSERTS  
14 THAT "DUE PROCESS" HAS NOT BEEN SATISFIED AND BAIL  
15 RELIEF IS JUSTIFIED.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

100

DATE APRIL 22, 1987

MINUTES DEPT. TEN

PRESENT HON. WILLIAM H. KENNEDY

JUDGE

CLERK DEBORAH ROCKETT

REPORTER MAY COLLIER

BAILIFF TIM GANBLE

CR 82908 THE PEOPLE OF THE STATE  
DAB14333 OF CALIFORNIA

by: FRANK BROWN

Plaintiff

Vs.

LARNEST CASSELL WOODS

Defendant

by: STAFFORD PRANTE

This being the time previously set by the Court for further trial by jury in the above-entitled matter, comes now the Defendant and both counsel as mentioned.

9:25 A.M. Court convenes with those parties present as previously mentioned. People's counsel calls

CINDY BURKS who is sworn and examined.

The following People's exhibits are marked and received into evidence

PeoEXHIBIT 3 - diagram (buildings and parking lot)

PeoEXHIBIT 4 - color photograph (two-toned car)

PeoEXHIBIT 5 - color photograph (silver car)

PeoEXHIBIT 6 - color photograph (silver car)

PeoEXHIBIT 7 - color photograph (silver car)

PeoEXHIBIT 8 - color photograph (silver car)

People's exhibits four through eight are passed among the jurors

10:01 A.M. Defense counsel cross-examines the witness.

10:17 A.M. The Court examines the witness.

10:18 A.M. People's counsel cross-examines the witness.

10:20 A.M. People's counsel calls

RICHARD ALLEN who is sworn and examined.

10:24 - 10:25 A.M. A reported side bench conference takes place

The Court denies Defense counsel's motion to take the witness on

voir dire.

10:28 A.M. Defense counsel cross-examines the witness.

10:30 A.M. People's counsel commences re-direct examination.

10:32 A.M. The Court admonishes the jurors and court is in recess

until 10:48 A.M. at which time court is again in session with all parties present. People's counsel calls

SHAMONE HICKERSON who is sworn and examined.

10:58 A.M. Defense counsel cross-examines the witness.

11:08 A.M. People's counsel commences re-direct examination.

11:12 A.M. Defense counsel commences re-cross examination.

11:13 A.M. People's counsel calls

LA CHESHA PARKER who is sworn and examined.

11:23 A.M. Defense counsel cross-examines the witness. The following

PeoEXHIBIT 9 - diagram (buildings and parking lot)

11:30 A.M. People's counsel calls

LARNEST WATERS who is sworn and examined.

MINUTES (Continued)

IN RE: - WILL VS. BOONE - APRIL 23, 1987 - PAGE TWO OF TWO

11:44 A.M. Defense counsel cross-examines the witness.  
11:48 A.M. People's counsel commences re-direct examination.  
11:49 A.M. The Court examines the witness.  
11:51 A.M. People's counsel calls  
JAMIE LANGE, and the Court orders her to return to this court-  
room at 1:30 P.M. this date. The Court admonishes the jurors and  
Court is in recess.  
11:53 - 11:54 A.M. An unreported side bench conference takes place.  
1:35 P.M. An unreported side bench conference takes place.  
1:36 P.M. Court is again in session with all parties present. Peo-  
ple's counsel calls  
JAMIE LANGE who is sworn and examined.  
1:54 P.M. Defense counsel cross-examines the witness. The follow-  
ing People's exhibit is marked and received into evidence:  
PeoEXHIBIT 10 - diagram (buildings and parking lot)  
2:19 P.M. People's counsel commences re-direct examination. The  
following People's exhibit is marked and received into evidence:  
PeoEXHIBIT 11 - color photograph (window in top of car)  
2:25 P.M. Defense counsel commences re-cross examination.  
2:29 P.M. The Court examines the witness.  
2:31 P.M. The Court examines the witness. 2:29 P.M. Defense counsel  
2:34 P.M. Defense counsel cross-examines the witness. cross-examines.  
2:35 P.M. People's counsel cross-examines the witness.  
2:37 P.M. The Court admonishes the jurors and court is in recess  
until 9:30 A.M. on April 24, 1987 in Department Ten. The Defendant  
is remanded to the custody of the Sheriff with bail set in the amount  
of \$50,000.00.

-dah-

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

110

DATE APRIL 24, 1987

MINUTES DEPT. TEN

PRESENT HON. WILLIAM H. KENNEDY

JUDGE

CLERK DIBORAH HOCKETT

REPORTER MAY COLLIER

BAIFF TIM GAMELE

CR 83908  
DAB14333

THE PEOPLE OF THE STATE  
OF CALIFORNIA

By: FRANK BROWN

Plaintiff

Vs.

EARNEST CASSELL WOODS  
Defendant

by: STAFFORD PRANTE

9:41 - 9:43 A.M. An unreported chambers conference takes place.

9:44 A.M. Court is in session with all parties, counsel, and jurors present. The following Court exhibit is marked:  
Court EXHIBIT 1 - note from juror

9:45 A.M. People's counsel calls JOHN EISELE who is sworn and examined. The following People's exhibit is marked and received into evidence.  
Peo EXHIBIT 12 - diagram of body

9:55 A.M. Defense counsel cross-examines the witness.

10:05 A.M. The People rest. Defense counsel calls RICHARD ALLEN, previously sworn, who is examined.

10:15 A.M. People's counsel cross-examines the witness.

10:15 - 10:16 A.M. A reported side bench conference takes place.

10:23 A.M. Defense counsel commences re-direct examination.

10:25 A.M. Defense counsel calls JODY or EDWIN SMITH, neither of whom are present.

10:26 A.M. The Court admonishes the jurors and excuses them. Outside the presence of the jurors, Defense counsel makes a representation that the two witnesses who are not present have been duly subpoenaed. Defense counsel moves the Court to be able to use their previous testimony since they are not present. The Court reserves ruling on the motion at this time pending further efforts to find them.

10:36 A.M. Court is in recess until 10:52 A.M. at which time court is again in session with all parties present. Defense counsel calls EARNEST CASSELL WOODS, JR. who is sworn and examined. The following Defense exhibit is marked:  
Def EXHIBIT A - diagram (buildings and parking lot)

11:40 A.M. People's counsel commences cross-examination.

11:50 A.M. The Court admonishes the jurors and excuses them until 9:00 A.M. on April 27, 1987 in Department Ten. Outside the presence of the jurors, court and counsel discuss witnesses. The Defendant is remanded to the custody of the Sheriff with bail set in the amount of \$50,000.00.

129

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE APRIL 27, 1987

MINUTES DEPT. TEN

PRESENT: HON. WILLIAM E. KENNEDY

JUDGE

CLERK DEBORAH HOCKETT

REPORTER KAY COLLIER

ANNE ROSENTHAL--2:50 P.M.

BAILIFF TIM GAMBLE

CR 83908 THE PEOPLE OF THE STATE by: FRANK BROWN  
DAB14333 OF CALIFORNIA

Plaintiff

Vs.

EARNEST CASSELL WOODS by: STAFFORD PRANTE  
Defendant

This being the time previously set by the Court for further trial in the above-entitled matter, comes now the Defendant and both counsel as mentioned.

9:06 A.M. Court convenes with those parties present as previously mentioned. EARNEST CASSELL WOODS, JR., previously sworn, resumes the witness stand for further cross-examination by People's counsel.

9:30 A.M. Defense counsel commences re-direct examination.

9:43 A.M. People's counsel commences re-cross examination.

9:49 A.M. Defense counsel calls

DR. HORMEZ GUARD who is sworn and examined.

The Court receives Defense exhibit A, and the following Defense exhibits are marked and received into evidence:

DeftEXHIBIT B - diagram-lateral view of ribs

DeftEXHIBIT C - diagram-thoracic cage

10:08 A.M. People's counsel commences cross-examination.

10:21 A.M. Defense counsel commences re-direct examination.

10:24 A.M. People's counsel commences re-cross examination.

10:26 A.M. The Defense rests. The Court admonishes the jurors and Court is in recess.

10:40 - 10:45 A.M. An unreported chambers conference takes place.

10:45 A.M. Court is in session outside the presence of the jurors. Court and counsel discuss jury instructions.

10:52 A.M. The jurors arrive. People's counsel commences final argument.

11:30 A.M. The Court admonishes the jurors and court is in recess until 11:43 A.M. at which time court is again in session with all parties and jurors present. The Court admonishes and excuses the jurors for lunch at this time so that Defense counsel may produce some diagrams he wishes to utilize for final argument.

1:21 P.M. Court is again in session with all parties present, but outside the presence of the jurors. Court and counsel discuss witnesses.

1:24 P.M. The jurors arrive. Defense counsel commences final argument.

2:29 P.M. The Court admonishes the jurors and court is in recess until 2:50 P.M. at which time court is again in session with all parties and jurors present. Defense counsel continues final argument.

3:05 P.M. People's counsel commences final argument.

(OVER)

MINUTES (Continued)

CR 83903 - PEOPLE VS. WOODS - APRIL 27, 1987 - PAGE TWO OF TWO

The Court admonishes the jurors and Court is in recess until 9:30 A.M. on April 28, 1987 in Department Ten. The Defendant remains in custody with bail set in the amount of \$50,000.

-dah-

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

1110

DATE MARCH 7, 1967

MINUTES DEPT. TEN

PRESENT: HON WILLIAM H. KENNEDY

JUDGE

CLERK DEBORAH HOCHETT

REPORTER KAY COLLIER

BAILIFF TIM GAMBLE

CP 83908 THE PEOPLE OF THE STATE  
PAR14333 OF CALIFORNIA

by: FRANK BROWN

Plaintiff

Vs.

EARNEST CASSELL WOODS  
Defendant

by: STAFFORD FRANTE

This being the time previously set by the Court for further trial by jury in the above-entitled matter, comes now the Defendant and both counsel as mentioned above.

9:33 A.M. Court convenes with those parties present as previously mentioned, but outside the presence of the jury. People's counsel asks the court to take witness Richard Allen out of order. The Court grants the motion over Defense objections.

9:44 A.M. Court is in recess until 9:49 A.M. at which time court is again in session with all parties present. The jurors are also present. JAMIE LANCE, previously sworn, resumes the witness stand for cross-examination by Defense counsel. The following People's exhibit is marked:

People's EXHIBIT 16 - diagram (same as People's exhibit 3)

10:19 A.M. People's counsel calls

RICHARD ALLEN who is sworn and examined.

10:28 A.M. Defense counsel cross-examines the witness.

10:35 - 10:36 A.M. A reported side bench conference takes place.

10:37 A.M. The Court admonishes the jurors and court is in recess until 10:59 A.M. at which time court is again in session with all parties and jurors present. People's counsel offers People's exhibits one through sixteen into evidence. The Court receives same. People's counsel calls

JOHN EISELE who is sworn and examined.

11:20 A.M. People's counsel commences re-direct examination. The following Defense exhibit is marked:

Defense EXHIBIT A - diagram of body

11:22 A.M. The Court examines the witness.

11:28 A.M. Defense counsel cross-examines the witness.

11:30 A.M. People's counsel calls

EDWIN SMITH who is sworn and examined.

11:45 A.M. Defense counsel cross-examines the witness.

11:52 - 11:59 A.M. A reported side bench conference takes place.

12:00 P.M. The People rest. The Court admonishes and excuses the jury. Outside the presence of the jury, Court and counsel discuss scheduling. The Court orders that the previous witness, EDWIN SMITH, to be returned to the prison where he is presently incarcerated forthwith.

12:43 P.M. Court is in recess until 2:01 P.M. at which time court is again in session with all parties present and outside the pre-

MINUTES (Continued)

CT 82965 - PEOPLE VS. WOODS - MARCH 5, 1967 - PAGE TWO OF TWO

space of the jurors. People's counsel makes an observation that he believes that the Defense may want to make a motion for mistrial based upon the testimony of Richard Allen. Defense counsel informs the Court that he wishes to have until tomorrow a.m. to consider the matter. The Court grants the request.

2:25 P.M. The jurors are now present, and the Court admonishes and excuses them until 10:00 A.M. on March 6, 1967 in Department Ten. Court is in recess.

2:51 P.M. Court is again in session with both counsel and Defendant present. Defense counsel makes an offer of proof regarding why he needs to have witness Jody Smith present to testify. The Court directs People's counsel to assist in locating the witness.

2:57 P.M. Court is in recess until the above date and time. Counsel are directed to return at 9:30 A.M. The Defendant remains at liberty on \$50,000.00 bond.

-dah-

Clerk's note: An unreported chambers conference took place from 2:02 to 2:09 P.M.

-dah-

DECLARATION OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY  
(C.C.P. §§ 1013(A), 2015.5)

I, Ernest C. Woods, the undersigned, declare:

I am over the age of 18 years, and X a party to this matter. I am a resident of SAN QUENTIN STATE PRISON, in the County of Marin, State of California. My Prison address is:

Ernest Cassell Woods #

CDCR#: D58091, CELL#: 3-N-6

SAN QUENTIN STATE PRISON  
SAN QUENTIN, CA 94974

On, 6/14/18, I served the attached:

Motion For Bail

on the parties, at the addresses listed below, by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff) with postage fully prepaid, in a deposit box provided by San Quentin State Prison, for mailing in the United States Mail as per the regulations governing out-going Legal Mail.

U.S. Supreme Court  
1 First Northeast  
Washington, D.C.  
20543

Attorney General's Off.  
950 Pennsylvania  
Washington, D.C.  
20530

I declare under the penalty of perjury, under the laws of the State of California, that all the foregoing is true and correct.

Executed on 6/14/18, at San Quentin, State California.

Ernest C. Woods #  
Declarant

# APPENDIX A

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 27 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

EARNEST CASSELL WOODS II,

No. 18-70070

Petitioner,

Southern District of California,  
San Diego

v.

ORDER

RON DAVIS, Warden,

Respondent.

Before: CANBY, TROTT, and WATFORD, Circuit Judges.

This court has reviewed the application for permission to file a second or successive 28 U.S.C. § 2254 habeas corpus petition and accompanying documents, filed in this docket pursuant to the pre-filing review order entered in docket No.

14-80181. The application fails to make a prima facie showing under 28 U.S.C. § 2244(b)(2), and is so insubstantial as to not warrant further review. Accordingly, it shall not be permitted to proceed. *See In re Thomas*, 508 F.3d 1225 (9th Cir.

~~2007). Application No. 18-70070 is therefore denied.~~

No motions for reconsideration, rehearing, clarification, or any other submissions regarding this order shall be filed or entertained.

**DENIED.**

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: EARNEST CASSELL WOODS, II,

No. 14-80181

Respondent.

ORDER

Before: THOMAS, Chief Judge, LEAVY and MURGUIA, Circuit Judges.

On December 19, 2014, this court issued an order directing the respondent to show cause why the following pre-filing review order should not be entered, restricting his future filings in this court. Upon review of respondent's December 31, 2014 response to the order to show cause, we hereby direct the Clerk to enter the following pre-filing review order. No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions relating to this order shall be filed or entertained in this closed docket.

~~Respondent's failure to comply with the order shall result in any new~~  
appeal(s) or petition(s) that he seeks to file being dismissed or not being filed and other sanctions being levied against respondent, such as a monetary judgment or a judgment of contempt, as the court may deem appropriate.

Pre-Filing Review Order

(1) This pre-filing review order shall apply to all notices of appeal and petitions filed by respondent, in whole or in part, if he proceeds pro se. This order shall not apply to appeals in which respondent has counsel or where the district court has expressly certified in its order that the appeal is not frivolous. Should respondent fail to comply with any of the provisions of this pre-filing review order, the Clerk shall not file the document and shall return the document to respondent, informing him of the deficiencies and granting him 14 days to correct the deficiency.

(2) Each notice of appeal and petition filed by respondent shall comply with the requirements of the Ninth Circuit Rules and the Federal Rules of Civil and Appellate Procedure, especially Federal Rule of Civil Procedure 54(b) and Federal Rule of Appellate Procedure 4(a), and shall contain the following sentence in capital letters "THIS NOTICE OF APPEAL IS FILED SUBJECT TO PRE-FILING REVIEW ORDER No. 14-80181" in the body of the notice of appeal or petition.

(3) Each of respondent's future notices of appeal and petitions shall include a copy of the order(s) of the district court from which he is appealing, a short and plain statement of the facts or law on which he will rely for the purposes

of the appeal, and a statement that he has not previously appealed this order or raised this issue in a prior appeal.

(4) If respondent's future notices of appeal or petitions are submitted in compliance with this order, the Clerk shall lodge the notice of appeal or petition and accompanying documents. The Clerk shall not file the appeal or petition or establish a presumptive schedule for the certificate of record, briefing, or transcripts except upon further order of the court. The court will review respondent's submissions and determine whether they merit further review and whether they should be filed.

(5) This pre-filing review order shall remain in effect until further order of this court. Respondent may, no earlier than March 1, 2017, petition the court to lift this pre-filing review order, setting forth the reasons why the order should be lifted.

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capital letters "THIS NOTICE OF APPEAL IS FILED SUBJECT TO PRE-FILING REVIEW ORDER No. 14-80181" in the body of the notice of appeal or petition.

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(5) This pre-filing review order shall remain in effect until further order of this court. Respondent may, no earlier than March 1, 2017, petition the court to lift this pre-filing review order, setting forth the reasons why the order should be lifted.

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: EARNEST CASSELL WOODS, II,

No. 14-80181

Respondent.

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

This court's records reflect that, since 2004, respondent Earnest Cassell

Woods, II, has initiated the following litigation in this court:

- 04-57191 - affirmed;
- 04-71661 - second or successive petition denied;
- 05-16371 - affirmed;
- ~~05-55302 - vacated and remanded;~~
- 05-72901 - petition for a writ of mandamus denied;
- 05-73546 - second or successive petition denied;
- 05-75351 - second or successive petition denied;
- 06-15973 - affirmed;
- 06-17166 - dismissed for failure to prosecute;
- 06-70688 - second or successive petition denied;
- ~~06-73062 - second or successive petition denied;~~
- 06-74804 - second or successive petition denied;
- 07-15589 - affirmed;
- 08-15595 - dismissed for lack of jurisdiction;
- 08-16659 - vacated and remanded;
- 09-15548 - reversed and remanded;
- 09-16113 - reversed and remanded;
- 09-73052 - second or successive petition denied;
- 10-16741 - dismissed for lack of jurisdiction;

10-55123 - certificate of appealability denied;  
10-73642 - second or successive petition denied;  
11-15101 - affirmed in part, reversed in part, and remanded;  
12-15444 - affirmed;  
12-55232 - certificate of appealability denied;  
12-55771 - dismissed for failure to prosecute;  
13-15248 - affirmed;  
13-16045 - dismissed for failure to prosecute;  
13-55326 - certificate of appealability denied;  
13-55974 - certificate of appealability denied;  
14-15241 - pending;  
14-16335 - pending;  
14-55545 - certificate of appealability denied; and,  
14-73404 - pending.

Respondent's practice of burdening this court with meritless litigation justifies careful oversight of respondent's future litigation in this court.

The Supreme Court has recognized that "every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the [c]ourt's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The continual processing of the [appellants'] frivolous requests . . . does not promote that end." *In re McDonald*, 489 U.S. 180, 184 (1989). This court faces the same problems of limited resources in handling its large volume of appellate litigation.

Therefore, the respondent, Earnest Cassell Woods, shall respond and show cause within 21 days after the date of this order why this court should not enter the following pre-filing review order. *See Visser v. California*, 919 F.2d 113, 114 (9th Cir. 1990) ("This court has the inherent power to restrict a litigant's ability to

commence abusive litigation"); *see also Wolfe v. George*, 486 F.3d 1120 (9th Cir. 2007) (finding no constitutional right to file frivolous litigation, upholding California vexatious litigant statute). If respondent fails to file a timely response to this order, the Clerk shall forthwith enter the pre-filing review order regardless of further filings by respondent.

Should the pre-filing review order be entered, respondent's failure to comply with the order shall result in any new appeal(s) he seeks to file being dismissed or not being filed and other sanctions being levied against respondent, such as a monetary judgment or a judgment of contempt, as the court may deem appropriate.

#### Pre-Filing Review Order

(1) This pre-filing review order shall apply to all notices of appeal and petitions filed by respondent, in whole or in part, if he proceeds pro se. This order shall not apply to appeals in which respondent has counsel or where the district court has expressly certified in its order that the appeal is not frivolous. Should respondent fail to comply with any of the provisions of this pre-filing review order, the Clerk shall not file the document and shall return the document to respondent, informing him of the deficiencies and granting him 14 days to correct the deficiency.

(2) Each notice of appeal and petition filed by respondent shall comply with the requirements of the Ninth Circuit Rules and the Federal Rules of Civil and Appellate Procedure, especially Federal Rule of Civil Procedure 54(b) and Federal Rule of Appellate Procedure 4(a), and shall contain the following sentence in

APPENDIX B

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Court of Appeal, Fourth Appellate District, Division One - No. D072684

S244167

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re EARNEST CASSELL WOODS II on Habeas Corpus.

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The request for release on bail, the request for stay of petitioner's conviction, and the petition for review are denied.

SUPREME COURT  
FILED

OCT 11 2017

Jorge Navarrete Clerk

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Deputy

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CANTIL-SAKAUYE

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*Chief Justice*

APPENDIX C

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
08/28/2017  
Kevin J. Lane, Clerk  
By: Scott Busskohl

In re EARNEST CASSELL WOODS II

D072684

on

(San Diego County  
Super. Ct. Nos. HC17093 &  
CR83908)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus, motion to vacate sentence, motion for evidentiary hearing, motion for appointment of counsel, and motion for bail have been read and considered by Justices Haller, O'Rourke, and Aaron. The petition is denied as untimely, repetitive, successive, and an abuse of the writ process. (*In re Reno* (2012) 55 Cal.4th 428, 459-460, 476, 496-497, 501, 511; *In re Clark* (1993) 5 Cal.4th 750, 769, 799.) The associated motions are denied.

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HALLER, Acting P. J.

Copies to: All parties

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APPENDIX D

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FILED  
Clerk of the Superior Court

AUG 10 2017

BY G. Arce-Correa

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN DIEGO  
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10 IN RE THE PETITION OF:

} HC 17093 (17<sup>th</sup> Petition)  
} CR 83908

11  
12 EARNEST CASSELL WOODS II,  
13 PETITIONER.  
14

} ORDER DENYING PETITION  
} FOR WRIT OF HABEAS CORPUS  
15

16 UPON REVIEW OF THE PETITION FOR WRIT OF HABEAS CORPUS AND THE  
17 COURT FILE IN THE ABOVE-REFERENCED CASE, THE COURT FINDS:

18 In 1987, petitioner was convicted of second degree murder (Pen. Code, § 187). The jury  
19 also found that petitioner had personally used a gun in the commission of the crime (Pen. Code,  
20 § 12022.5). He was sentenced to 15 years to life on the murder charge plus a two-year gun use  
21 enhancement, for a total term of 17 years to life. Petitioner timely appealed on grounds the trial  
22 court (1) improperly instructed the jury on implied malice, (2) erroneously admitted character  
23 evidence, and (3) improperly evaluated the evidence on his request for a reduction of his conviction  
24 to manslaughter. The judgment was affirmed on appeal. (4<sup>th</sup> Dist., Div. 1, D006442.)

25 On July 17, 2002, Petitioner filed his first habeas corpus petition in this court arguing that  
26 he received ineffective assistance of counsel for failure to raise the imperfect self-defense doctrine  
27 and that there was instructional error. That petition was denied on July 23, 2002. Petitioner  
28 subsequently filed several petitions and motions asking this court to reconsider its denial of the  
29 initial petition and the merits of his case. Each of those requests was denied. Petitioner's several  
30 petitions to the Court of Appeal for habeas relief were also unsuccessful.

1 On July 30, 2013, petitioner filed in this court his fifteenth petition for writ of habeas corpus  
2 challenging the October 3, 2012, decision by the Board of Parole Hearings (“BPH”) finding him  
3 unsuitable for parole and denying his parole for three years. On September 23, 2013, that petition  
4 was denied.

5 On July 9, 2014, Petitioner filed another petition for writ of habeas corpus in this court  
6 challenging: (1) the April 30, 2014, decision by the BPH finding him unsuitable for parole; and  
7 (2) the underlying conviction. That petition was also denied.

8 On May 11, 2017, Petitioner filed the instant, 17th petition for writ of habeas corpus. In  
9 conjunction with the petition, Petitioner also filed a “Motion to Vacate Sentence and Recall the  
10 Remittitur,” a “Motion for Bail,” and a “Motion for Appointment of Counsel.” Petitioner filed  
11 what appears now to this court to be a duplicate of his May 11, 2017 filing on July 3, 2017. The  
12 court issued an order extending time to rule on all the motions and petitions to and including  
13 August 31, 2017. On July 25, 2017, Petitioner filed an objection to the order extending time.

14 Under California Rules of Court, rule 4.551, subdivision (h), the court on its own motion,  
15 “for good cause stated in the order,” “may shorten or extend time” for issuing an order on a petition  
16 for writ of habeas corpus. In this case, the court had good cause to extend time because it had a  
17 second filing from Petitioner, which it needed time to carefully review, even if it did subsequently  
18 ~~determine that the petition was a duplicate of the first petition.~~ Moreover, the petitions and  
19 motions in this case are extremely hard to follow, requiring extra time to analyze and compare to  
20 those issued raised in more than a dozen other petitions filed by this same inmate. Thus, the court  
21 had good cause to extend itself time to rule and Petitioner’s objection is overruled.

22 On July 25, 2017, Petitioner also filed a motion for judicial notice, pursuant to evidence  
23 code section 450-455, requesting that the court take judicial notice of “the records of *People v.*  
24 *Woods*, D006442” and “that the Court of Appeal states that the appellate record was ‘destroyed in  
25 2009 and is no longer available from this Court.’”

26 “[A] court may take judicial notice of the [e]xistence of each document in a court file, but  
27 can only take judicial notice of the truth of facts asserted in documents such as orders, findings of  
28 fact and conclusions of law, and judgments.” (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914, italics  
29 omitted; see Evid. Code § 452, subd. (d) [“Records of ... any court of this state” are among the  
30 matters that may be judicially noticed].) (*People v. Franklin* (2016), 63 Cal. 4th 261, 280.)

1 This court will take judicial notice that Petitioner attached an uncertified letter with  
2 letterhead that reads "Court of Appeal, Fourth Appellate District, Division One," which states:  
3 "Unfortunately, the record requested was destroyed in 2009 and is no longer available from this  
4 court." The signature line underneath the aforementioned statement lists the name "Kevin J. Lane,  
5 Clerk, BY: J. Rodriguez, Deputy Clerk." The court will also take judicial notice of the Court of  
6 Appeal, Fourth Appellate District, Division One, unpublished opinion in *People v. Woods*,  
7 D006442, and the findings of facts, conclusions of law, and judgments in the opinion. However,  
8 the request for the court to take judicial notice of the "records of *People v. Woods*, D006442,"  
9 which the court has not seen and does not have within its possession is denied.

10 Having addressed Petitioner's objection to the order extending time and the request for  
11 judicial notice, the court consolidates the May 11, 2017 and July 3, 2017 petitions, together with  
12 the remaining motions, into one order and now rules as follows:

13 The petition and attendant motions are largely unintelligible, but one thing is very clear:  
14 there are no changes in the law or facts since the prior filings to justify the late and repetitive  
15 collateral attack on Petitioner's conviction.

16 In short, petitioner asserts (1) he is factually innocent because he acted in self-defense, (2)  
17 jury instruction error precluded the jury from considering imperfect self-defense; (3) prosecutorial  
18 misconduct through mischaracterization of facts, tampering with witnesses, and forcing petitioner  
19 to pay excessive bail; and, (4) that the judiciary has violated his equal protection rights by denying  
20 his prior petitions for writ of habeas corpus arbitrarily.

21 Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively  
22 final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds  
23 for relief, and then later to *prove* them. "For purposes of collateral attack, all presumptions favor  
24 the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the  
25 burden of overturning them. Society's interest in the finality of criminal proceedings so demands,  
26 and due process is not thereby offended. [Citation Omitted.]" (*People v. Duvall* (1995), 9 Cal. 4th  
27 464, 474, 886.)

28 To satisfy this high burden, the "petition should both (i) state fully and with particularity  
29 the facts on which relief is sought [Citations omitted], as well as (ii) include copies of reasonably  
30 available documentary evidence supporting the claim, including pertinent portions of trial  
transcripts and affidavits or declarations. [Citations omitted.] **'Conclusory allegations made**

1 without any explanation of the basis for the allegations do not warrant relief, let alone an  
2 evidentiary hearing.’ [Citation omitted.]” (*Duvall, supra*, 9 Cal. 4th at p. 474.)

3 Moreover, as Petitioner has been informed repeatedly in prior orders, unless a petitioner  
4 can justify the filing of numerous habeas corpus petitions, the reviewing court may summarily  
5 deny a petition in its entirety. (*In re Clark* (1993) 5 Cal.4th 750, 767-775.) A petitioner “is not  
6 permitted to try out his contentions piecemeal by successive proceedings attacking the validity of  
7 the judgment against him.” (*Id.*, at p. 768, quoting *Ex parte Connor* (1940) 16 Cal.2d 701, 705.)  
8 “It has long been the rule that absent a change in the applicable law or the facts, the court will not  
9 consider repeated applications for habeas corpus presenting claims previously rejected.  
10 [Citations.]” (*Clark, supra*, at p. 767.) Courts, including this State’s highest court, have also  
11 refused to consider newly presented grounds for relief which were known or should have been  
12 known to a petitioner at the time of a prior collateral attack on the judgment. (*See i.e. Connor,*  
13 *supra*, at pp. 704-705.)

14 A petitioner has the burden of explaining any substantial delay in the making of a claim.  
15 (*In re Swain* (1949) 34 Cal.2d 300, 304; *In re Clark* (1993) 5 Cal.4th 750, 765.) Petitioner has the  
16 burden of establishing (1) absence of substantial delay, (2) good cause for the delay, or (3) that his  
17 claims fall within an exception to the timeliness bar. (*In re Reno* (2012), 55 Cal. 4th 428, 460,  
18 citing to *In re Robbins* (1998) 18 Cal.4<sup>th</sup> 770, 780.)

19 Moreover, generally habeas corpus cannot serve as a second appeal. (*In re Harris* (1993)  
20 5 Cal. 4th 813, 825; *In re Eli* (1969) 71 Cal.2d 214, 219.) Thus, what the California Supreme  
21 Court has often referred to as the “Dixon Rule” mandates that ““in the absence of special  
22 circumstances constituting an excuse for failure to employ that remedy, the writ will not lie where  
23 the claimed errors could have been, but were not raised upon a timely appeal ...”” (*In re Harris*  
24 (1993), 5 Cal.4th at p. 829, citing *In Re Dixon* (1953) 41 Cal. 2d 756, 759; *see also In re Reno*  
25 (2012) 55 Cal. 4th 428, 490.)

26 The corollary of the “Dixon Rule,” is frequently labeled the “Waltreus Rule,” which  
27 dictates that when a criminal defendant raises in a petition for a writ of habeas corpus an issue  
28 that was raised and rejected on direct appeal, such petitions will be summarily denied as  
29 procedurally barred. (*See In re Waltreus* (1965) 62 Cal. 2d 218, 225; *See also In re Reno* (2012)  
30 55 Cal. 4th 428, *In re Harris, supra*, 5 Cal.4th 813.) Courts will “presume that the elaborate  
appellate system established by the state Constitution and the Legislature was sufficient to allow

1 a person to present adequately his or her grievances for judicial review.” (*In re Harris, supra*, 5  
2 Cal. 4th at p. 829.)

3 As the Supreme Court of California has explained, “[t]he *Waltreus* rule is thus consistent  
4 with the very nature of habeas corpus; that is, an extraordinary remedy applicable when the usual  
5 channels for vindicating rights – trial and appeal – have failed. If an issue has been raised and  
6 rejected first at trial and then on appeal, no reason exists to permit what amounts to a third bite of  
7 the apple. Indeed, in this age of dramatically increased filings and shrinking judicial resources,  
8 the justification for the *Waltreus* rule retains continued, if not enhanced, power, and the rule has  
9 been cited consistently and continuously since 1965 when *In re Waltreus* was first decided  
10 [Citations Omitted].” (*In re Reno, supra*, 55 Cal.4th at p. 477.) This rule applies with equal force  
11 to repetitive petitions for writ of habeas corpus, where issues were already considered and  
12 rejected.

13 There exist limited exceptions to the general rule. A petitioner can renew a legal issue,  
14 despite having raised the issue unsuccessfully on appeal or in prior petitions for the following  
15 reasons: “(1) where the issue constitutes a fundamental constitutional error; that is, where the  
16 claimed constitutional error is both clear and fundamental, and ‘strikes at the heart of the trial  
17 process’ [citation omitted]; (2) where the judgment of conviction was rendered by a court lacking  
18 fundamental jurisdiction, described as ‘an entire absence of power to hear or determine the case,  
19 an absence of authority over the subject matter or the parties’ [citation omitted]; (3) where the  
20 court acted in excess of its jurisdiction, such as when it imposes an illegal sentence; and (4) when  
21 there has been a change in the law [or facts] affecting the petitioner.” (*In re Reno* (2012), 55 Cal.  
22 4th 428, 478.) In addition, a court may consider a delayed claim that is based on “actual  
23 innocence.” (*Id.*, citing to *In re Clark, supra*, 5 Cal. 4th at 797-798 and *In re Robbins, supra*, 18  
24 Cal. 4th at pp. 780-781.)

25 Petitioner does nothing more than re-characterize or repeat verbatim issues already  
26 decided. Petitioner does not cite to any new, applicable law or facts that warrant re-consideration  
27 of issues already considered and rejected. Moreover, as to any new claims, Petitioner again does  
28 not provide this court with new applicable law or fact justifying the delay in raising the issues.  
29 Petitioner has been told numerous times all of the reasons for the previous denials and therefore  
30 this court will not waste judicial resources repeating them all again here in detail. The petition in

1 this case is barred as untimely, repetitive, successive, and an abuse of writ. (*In re Reno, supra*, 55  
2 Cal. 4th 428, 459, 496-497, 501, 511; *In re Clark* (1993) 5 Cal. 4th 750, 769, 799.)

3 As for Petitioner's claim that his "equal protection" rights have been violated due to this  
4 court "arbitrarily," denying his prior petitions, Petitioner fails to make a prima facie showing that  
5 he is entitled to relief. Nowhere in the record provided by Petitioner does it appear that his prior  
6 orders were denied "arbitrarily" or that he was denied the same rights as other similarly situated  
7 individuals. Petitioner's claim is based on nothing more than a conclusory allegation unsupported  
8 by facts or law. (*See Duvall, supra*, 9 Cal. 4th at p. 474.)

9 Thus, the petition and associated motions are procedurally barred and summarily denied.

10 Furthermore, it bears emphasis, that contrary to Petitioner conclusory allegations, he is not  
11 actually innocent nor has there been a fundamental miscarriage of justice.

12 The "allegations of innocence" must "cast fundamental doubt on the accuracy and  
13 reliability of the trial proceedings" (*Reno, supra*, at p. 474). "At the guilt phase, such evidence,  
14 if credited, must undermine the entire prosecution case and point unerringly to innocence or  
15 reduced culpability." [Citation.] (*In re Lawley* (2008) 42 Cal.4th 1231, 1239.) "[A] petitioner  
16 must show 'the evidence of innocence could not have been, and presently cannot be, refuted.'  
17 [Citation.]" (*Reno, supra*, at p. 474.) **"If 'a reasonable jury could have rejected' the evidence  
18 presented, a petitioner has not satisfied his burden. [Citation.]"** (*Lawley, supra*, at p. 1239.)

19 Essentially, Petitioners argument for a claim of actual innocence and fundamental  
20 miscarriage of justice rests on the following premise:

21 Petitioner alleges that he killed the victim because he believed that the victim had a  
22 weapon, thus Petitioner acted in self-defense. Petitioner asserts that, even if his belief was  
23 unreasonable, the doctrine of imperfect self-defense required a finding of manslaughter, instead of  
24 second degree murder. Petitioner argues that the jury was misled by the prosecutor and improperly  
25 instructed, thus it failed to consider the imperfect self-defense doctrine. Contrary to Petitioner's  
26 position, the record supplied by Petitioner to support his claims, demonstrates that the issue of self-  
27 defense *and* imperfect self-defense was thorough explored and litigated at trial.

28 The facts presented to the jury were, in sum, as follows:<sup>1</sup>

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<sup>1</sup> The facts are summarized from the Court of Appeal, Fourth Appellate District, Division One, opinion in D006442.

1 On September 21, 1986, patrons of a discotheque were leaving when Petitioner blocked  
2 traffic in one lane. The victim, Marcellus Stone, exited his car and asked Petitioner to move.  
3 Petitioner then got out of his car and asked the victim whether he was crazy. Brandishing a gun,  
4 Petitioner approached the victim, who inquired, "what are you going to do, home boy?" Petitioner,  
5 three to four feet from Stone, aimed and fired the gun into the victim's chest. Several witnesses  
6 to the shooting testified the victim was not aggressive, made no threats or sudden moves toward  
7 Petitioner, and used no profanity.

8 The physician and autopsy pathologist concluded that the victim died from a bullet entering  
9 the chest just to the left of the breast bone. The wound was a contact or close-to contact entrance  
10 wound, where the muzzle was probably within half inch or inch of the skin at the time the gun was  
11 discharged. The bullet traveled in a downward position, lodging approximately four inches into  
12 the victim's body.

13 Petitioner testified at his own trial, and admitted to shooting Stone. Petitioner stated that  
14 he was pulling out of the parking lot when the car where Stone sat as a passenger pulled out and  
15 almost hit him. Upon stopping his car, Petitioner heard Stone cuss at him and saw Stone reach  
16 underneath the seat of the car and hold his jacket in a manner as if he was attempting to conceal  
17 something underneath it; Petitioner responded by reaching for the gun he kept in his glove  
18 compartment, got out of his car and approached Stone, at which time Stone cursed at him again.

19 When Petitioner then asked Stone if he was crazy, Stone approached him aggressively,  
20 called Petitioner names and asked what Petitioner was going to do about it. When Stone then  
21 leaned toward Petitioner with his right hand in his jacket, Petitioner fired at Stone. Petitioner then  
22 immediately returned to his car, drove out of the parking lot to Sunset Cliffs where he threw his  
23 gun and bullets into the ocean. Petitioner admitted that he never saw the victim with a gun, though  
24 Petitioner believed that Stone was reaching for one; and thought Stone was going to kill him.

25 A defense forensic pathologist testified the downward path taken by the bullet in Stone's  
26 body was consistent with the possibility Stone was in a crouched position when he was shot.

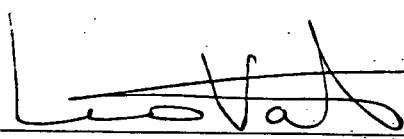
27 Although the jury did not receive CALJIC 5.17, it did receive CALJIC No. 8.45 (Definition  
28 of Involuntary Manslaughter) and CALJIC 8.40 (Definition of Voluntary Manslaughter). Both of  
29 these instructions contained the following language on imperfect self-defense. "There is no malice  
30 aforethought if the killing occurred upon a sudden quarrel or heat of passion, [or] **[in the honest**

1 but unreasonable belief in the necessity to defend oneself against imminent peril to life or  
2 great bodily injury.]” In fact, as the documents supplied by Petitioner establish, the imperfect  
3 self-defense doctrine was explained to the jury in closing argument and argued by the parties.  
4 (Petition, Exh. C, p. 406.) When evaluating the correctness of the jury instructions, the court  
5 considers the instructions as a whole, not merely a single instruction. (*People v. Musselwhite*  
6 (1998) 17 Cal.4th 1216, 1248.) Thus, any error in failing to instruct the jury on CALJIC 5.17 was  
7 harmless beyond a reasonable doubt, since the jury was instructed on imperfect self-defense via  
8 CALJIC 8.45 and 8.40. In fact, the theory of self-defense and imperfect self-defense seemed to  
9 be the focal points argued by the parties.<sup>2</sup> The jury thoroughly considered the imperfect self-  
10 defense theory, rejected it, and convicted Petitioner of second degree murder based on the evidence  
11 presented at the trial. There has been no change in law or facts cited to by Petitioner that would  
12 have changed the outcome in this case. Petitioner is not factually innocent nor has there been a  
13 fundamental miscarriage of justice.

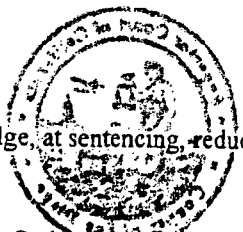
14 Thus, none of the exceptions to the general rule excusing repetitive or delayed filings apply  
15 to the instant petition. The petition and attendant motions are thus summarily denied.

16 It is further ordered that a copy of this Order be served upon (1) petitioner, and; (2) the San  
17 Diego District Attorney, Appellate Division.

18  
19 IT IS SO ORDERED.

20  
21  
22 DATED: 8-9-17   
23 LEO VALENTINE  
24 JUDGE OF THE SUPERIOR COURT

25  
26  
27  
28 STAFFIFIED & FILED



29  
30 <sup>2</sup> Defense counsel even requested that the Judge, at sentencing, reduce the conviction to manslaughter based on the imperfect self-defense doctrine.

DECLARATION OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY

(C.C.P. §§ 1013(A), 2015.5)

I, Earnest C. Woods #, the undersigned, declare:

I am over the age of 18 years, and X a party to this matter. I am a resident of  
SAN QUENTIN STATE PRISON, in the County of Marin, State of California. My  
Prison address is:

Earnest Cassell Woods #

CDCR#: DS8091, CELL#: 3-N-6

SAN QUENTIN STATE PRISON

SAN QUENTIN, CA 94974

On, 7/17/18, I served the attached:

on the parties, at the addresses listed below, by placing true and correct copies  
thereof, enclosed in a sealed envelope (verified by prison staff) with postage fully  
prepaid, in a deposit box provided by San Quentin State Prison, for mailing in the  
United States Mail as per the regulations governing out-going Legal Mail.

U.S. Supreme Ct

WASHINGTON, D.C

20543-0001

I declare under the penalty of perjury, under the laws of the State of California, that  
all the foregoing is true and correct.

Executed on 7/17/18, at San Quentin, State California.

E. C. Woods #